Supreme Court, U.S.
FILED
JAN 6 - 2010
OFFICE OF THE CLERK

No. 09-824

In The

Supreme Court of the United States

Craig Smallwood,
Petitioner

v.

City and County of Honolulu,

and

Haseko (Ewa) Inc.
Respondents

On Petition For Writ Of Certiorari

To The Intermediate Court Of Appeal

State Of Hawaii

PETITION FOR WRIT OF CERTIORARI

Craig Smallwood
Petitioner Pro Se
91-623 Papipi Rd
Ewa Beach, HI 96706
(808) 689-6747

Questions Presented For Review

1) Was the Petitioner's basic and most fundamental right of due process denied in an environmental case of epic proportion with devastating consequences some of which are global in nature?

2) Did the Hawaii State Judiciary system fail the Petitioner in granting the Petitioner his day in court?

3) Did the Hawaii Supreme Court and the Hawaii Appellate Court err with a decision, through no fault of the Petitioner, allowing deliberate court negligence to create an untimely appeal and no jurisdiction?

4) Did the Hawaii Circuit Court judge use clear legal error, prejudicial decisions, abuse of judicial power, deliberate delay and court negligence to deny jurisdiction even after this case was remand back to the court by the Intermediate Court of Appeals to deny Petitioner his due process?

LIST OF PARTIES (ii)

[X] All parties appear in the caption of the case on the cover page.

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IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari be issued to review the trial court and the Appellate Court for their judgments of dismissals.

OPINIONS BELOW

The opinion/judgment of the highest state court not to review the merits appears at Appendix A to the petition and is unpublished.

The opinion/judgment of the Appellate court appears at Appendix B to the petition and is unpublished.

The opinion/judgment of the trial court appears at Appendix D to the petition and is unpublished.

The date on which the highest state court decided my case was October 9, 2009, and a copy of that decision appears at Appendix A.

The jurisdiction of this Court is invoked under 28 U.S.C. 1258(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVE

1) The 5th and 14th Amendments giving the right of due process.

2) NEPA (National Environmental Policy Act).

3) APA (Administrative Procedure Act).

4) The 4th Amendment giving the right against unreasonable seizures.

This is a case where the Petitioner discovered that environmental laws were blatantly being violated and overlooked with certain dire consequences. Petitioner filed a complaint and a motion for an order of protection on the grounds that State and Federal laws were clearly being disregarded with an inevitable outcome of death and destruction locally, regionally, and in some instances these conclusions are of a global nature. Petitioner clearly cited some environmental statutes that were being illegally violated and some of the obvious dangers to include possible extinction of an endangered species (specifically, the Hawaiian monk seal) and its critical habitat. Pollution and contamination of two known food sources, one of which of which is exported globally. The building of

shoreline construction and up to a 20ft grade change using dredge and fill materials running parallel to the ocean, redirecting an inevitable tsunami into an existing community. Lastly, the destruction of an ecosystem and of coral reefs, thereby changing the currents, and contributing the warming of waters which might eventually exponentially contribute to the melting of polar ice caps, worldwide increasing levels of sea levels, and increasing the problem of global warming.

All that the Petitioner ever requested was his chance to present overwhelming scientific evidence and a number of previously qualified world renowned experts to provide testimony in a court of law to substantiate his factual local and regional environmental damage claims and the Petitioner's conclusion of global changing theories.

This simple but most fundamental tenet of the American judicial system that of due process has been perverted and denied by the Hawaii judicial system. For close to ten years the Petitioner has applied to the court for a hearing that has never been granted, in spite of a remand from the ICA (Intermediate Court of Appeals).

The stakes are that of billions of dollars of construction and development, including a regional flood control plan into the Pacific Ocean, vs. the application of federal and state environmental laws enacted for the good of mankind and to protect the Petitioner and his community along with future generations from this specific type of project which places dollars and development at the cost of the destruction and tampering with Mother Nature whose visible effect will be felt for centuries to come.

In the beginning this was a simple environmental case consisting of whether or not an EIS (environmental impact statement) had been triggered and if a supplemental EIS was required by Hawaii statutes. Unfortunately, the Petitioner came across a judge who had prejudicially decided this case would not be heard.

Even after remand, the judge chose to not accept jurisdiction repeatedly citing insufficiency of the complaint, when in fact the complaint was more than legally sufficient and such a ruling had no legal grounds. The judge also granted motions that were clearly untimely even though the Petitioner had requested that they be stricken from the record.

Worst of all, when the judge dismissed the complaint for the third time, the Petitioner requested

that the dismissed complaint be voluntarily withdrawn as not to have a jurisdictional conflicts with the federal court. The judge accepted the voluntary withdrawal, and then banned the State case and State law issues from ever being presented in State court. Although this case was never heard in State court, in other words, Petitioner was denied his first bite at the apple. As if these jurisdictional shenanigans were not despicable enough, the Court purposely delayed issuing final orders and a final judgment creating a second appeal impossible, as the first appeal resulted in remand.

The court records are quite clear on the above issues and orders, including motion in opposition to the dismissal of the complaint for insufficiency and an order to supplement the record of appeal granted for deliberate court negligence. Unfortunately, the

order granting supplementing of the record of decision with a final judgment and the admission of deliberate court negligence was also delayed and came after the dismissal of the appeal as untimely, and then the State Supreme Court used its judicial discretion not to review the case.

In conclusion, the court would be proper and justice would be served with an order demanding that all construction done on the Ewa plain in accordance with grading compliant to the regional drainage plan, exiting into Kaloi Gulch then to flood into the Pacific Ocean, be removed and the land be returned back to its natural state as it was in 2004. However, Petitioner is merely requesting that the court order further construction to cease and that this case be remanded to the Supreme Court of Hawaii for injunctive relief to determine what

mitigation measures might be necessary at this point, with the exception that all placed fill and dredge materials be immediately removed from the shoreline to a safe arbitrary distance of one mile inland to avoid further pollution from rain run-off and leeching.

REASONS FOR GRANTING THE PETITION

This petition should be granted not only because of the despicable attempt to deny Petitioner due process because of his economic status and inability to afford legal representation. Additionally, because this case also involves clear violations of NEPA by allowing unknown amounts of pollution, pesticides, and fill materials to enter and destroy

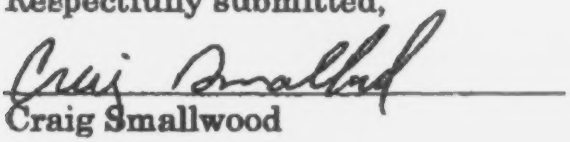
portions of U.S. territorial waters (namely that the Pacific Ocean), along with the purposeful avoidance of completing legally and triggered EIS's by using false, misleading, and limited scope EIS's, EA's, and SEIS's, violating the Administrative Procedure Act, by not taking into account the scope of the entire project.

These violations will create certain and inevitable damage, some planetary in its effects, some local, such as the destruction of an existing community by redirecting the force of a tsunami, which violates the 4th Amendment by effectively unreasonable seizing of property.

CONCLUSION

This petition for a writ of certiorari should be granted.

Respectfully submitted,



Craig Smallwood

Date: January 5, 2010

CERTIFICATE OF COMPLIANCE

CRAIG SMALLWOOD,

Petitioner

v.

CITY AND COUNTY OF HONOLULU and

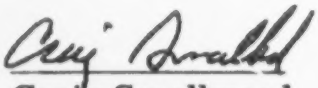
HASEKO (EWA) INC.,

Respondents

As required by Supreme Court Rule 33.1(h), I certify that the petition for a writ of certiorari contains 1154 words, excluding the parts of the petition that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 5, 2010



Craig Smallwood

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

CRAIG SMALLWOOD – PETITIONER

VS.

CITY AND COUNTY OF HONOLULU

and

HASEKO (EWA) INC. – RESPONDENTS

PROOF OF SERVICE

I, Craig Smallwood, do swear or declare that on this date, January 6, 2010, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by hand delivery to each of them.

The name and addresses of those served are as follows:

City and County of Honolulu

Don S. Kitaoka (Department of the Corporation Counsel)

City and County of Honolulu

Honolulu, HI 96813

Morihara Lau & Fong LLP (Attorneys for Haseko (Ewa) Inc.)

Paul H. Sato

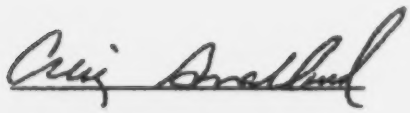
400 Davies Pacific Center

841 Bishop St

Honolulu, HI 96813

I declare under penalty of perjury that the foregoing is true and correct.

Executed on January 6, 2010



Craig Smallwood

91-623 Papipi Rd

Ewa Beach, HI 96706

NO. 29650 (A-2)

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

CRAIG SMALLWOOD,
Petitioner/Plaintiff – Appellant,

vs.

HASEKO (EWA), INC., and CITY AND COUNTY OF HONOLULU,
Respondents/Defendants – Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(CIV. NO. 04-1-2315)

ORDER REJECTING APPLICATION FOR WRIT OF CERTIORARI
(By: Moon, C.J., for the court)

Petitioner/plaintiff-appellant Craig Smallwood's application for writ of certiorari, filed on September 16, 2009, is hereby rejected.

(APPENDIX A)

(A-3)

DATED: Honolulu, Hawai'i October 9, 2009.

FOR THE COURT: SEAL STAMPED

\S\ SIGNATURE HERE
Chief Justice

Considered by : Moon, C.J., Nakayama, Acoba, Duffy, and Recktenwald, JJ.

NO. 29650

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CRAIG SMALLWOOD, Plaintiff-Appellant,

v.

HASEKO (EWA) INC., and CITY AND COUNTY OF HONOLULU, Defendants-Appelless

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

(CIVIL NO. 04-1-2315)

ORDER DENYING PLAINTIFF-APPELLANT CRAIG SMALLWOOD'S JUNE 29, 2009 HRAP RULE 40 MOTION FOR RECONSIDERATION OF THE JUNE 18, 2009 DISMISSAL ORDER

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

(APPENDIX B)

Upon review of (1) the June 18, 2009 order dismissing appellate court case number 29650 for lack of appellate jurisdiction, (2) Plaintiff-Appellant Craig Smallwood's (Appellant Smallwood) June 29, 2009 motion to reconsider the June 18, 2009 dismissal order pursuant to Rule 40 of the Hawai' Rules of Appellate Procedure (HRAP), and (3) the record, we conclude that we did not overlook or misapprehend any points of law or fact when we dismissed appellate court case number 29650 for lack of jurisdiction, and, thus, Appellant Smallwood's June 29, 2009 HRAP Rule 40 motion for reconsideration of the June 18, 2009 dismissal order lacks merit.

Accordingly, IT IS HEREBY ORDERED that Appellant Smallwood's June 29, 2009 HRAP Rule 40

motion for reconsideration of the June 18, 2009 dismissal order is denied.

DATED: Honolulu, Hawai'i, July 2, 2009.

"s/" _____

Presiding Judge

"s/" _____

Associate Judge

"s/" _____

Associate Judge

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

NO. 29650

IN THE INTERMEDIATE COURT OF APPEALS

OF THE STATE OF HAWAI'I

CRAIG SMALLWOOD, Plaintiff-Appellant,

v.

HASEKO (EWA) INC., and CITY AND COUNTY OF HONOLULU,

Defendants-Appellees

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT

(CIVIL NO. 04-1-2315)

ORDER DISMISSING APPEAL

FOR LACK OF APPELLATE JURISDICTION

(By: Foley, Presiding Judge, Fujise and Leonard, JJ.)

(APPENDIX C)

Upon review of the record, it appears that we lack jurisdiction over this appeal that Plaintiff-Appellant Craig Smallwood (Appellant Smallwood) has asserted from the Honorable Sabrina S. McKenna's January 22, 2009 order that, among other things, dismissed Civil No. 04-1-2315-12 (SSM) in its entirety (the January 22,2009 dismissal order), because the circuit court has not reduced the January 22, 2009 dismissal order to a separate judgment pursuant to Rule 58 of the Hawai'i Rules of Civil Procedure (HRCP).

Hawaii Revised Statutes (HRS) 641-1 (a) authorizes appeals to the intermediate court of appeals from final judgments, orders, or decrees. Appeals under HRS 641-1 "shall be taken in the manner...provided by the rules of the court." HRS 641-1(c). The supreme court has promulgated HRCP

Rule 58, which specifically requires that "[e]very judgment shall be set forth on a separate document." The supreme court has held that " [a]n appeal may be taken...only after the orders have been reduced to a judgment and the judgment has been entered in favor

NOT FOR PUBLICATION IN WEST'S HAWAII REPORTS AND PACIFIC REPORTER

of and against the appropriate parties pursuant to HRCP [Rule] 58 [.]" Jenkins v Cades Schutte Fleming & Wright, 76 Hawai'i at 119, 869 p. 2d at 1338. The separate judgment must "either resolve all claims against all parties or contain the finding necessary for certification under HRCP [Rule] 54(b)." Id. "An appeal from an order that is not reduced to a judgment in favor or against the party by the time the record is filed in the supreme court will be

dismissed." Id. at 120. 869 P. 2d at 1339 (footnote omitted). Consequently, "an order disposing of a circuit court case is appealable when the order is reduced to a separate judgment." Alford v City and County of Honolulu, 109 Hawai'i 17, 20, 122 P. 3d 809, 815 (2005) (Citation omitted). For example, the supreme court has explained that, "[a] lthough RCCH [Rule] 12(q) [(regarding dismissal for want of prosecution)] does not mention the necessity of filing a separate document, HRCP [Rule] 58, as amended in 1990, expressly requires that 'every judgment be set forth on a separate document.'" Price v Obayashi Hawaii Corporation, 81 Hawai'i 171, 176, 914 P. 2d 1364, 1369 (1996).

In appellate court case number 27285, the intermediate court of appeals vacated the February 23, 2005 judgment in Civil No. 04-1-2315-12 (SSM),

and, thus, the February 23, 2005 judgment is now void. See Smallwood v. City and County of Honolulu, 118 Hawai'i 139, 185 P. 3d 887 (App. 2008). The circuit court has not reduced the January 22, 2009 dismissal order to a separate judgment in Civil No. 04-1-2315-12 (SSM). On April 21, 2009, the appellate court clerk filed the record on appeal for appellate court case number 29650, and at that time the record on appeal

NOT FOR PUBLICATION IN WEST'S HAWAI'I REPORTS AND PACIFIC REPORTER

did not contain a separate judgment that, on its face, resolves all claims against all parties in Civil No. 04-1-2315-12 (SSM).

Therefore, Appellant Smallwood's appeal is premature, and we lack appellate jurisdiction.

Accordingly, IT IS HEREBY ORDERED that this appeal in appellate court case number 29650 is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, June 18, 2009.

"s/"
Presiding Judge

"s/"
Associate Judge

"s/"
Associate Judge

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Telephone: (808) 768-5248

Attorneys for Defendant
City and County of Honolulu

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CRAIG SMALLWOOD	) CIVIL NO. 04-1-2315-12 (SSM)
Plaintiff,	) FINAL JUDGMENT IN FAVOR OF DEFENDANTS HASEKO (EWA), INC AND CITY AND COUNTY OF HONOLULU
vs.	
HASEKO (EWA), INC., and CITY AND COUNTY OF HONOLULU,	
Defendants	

FINAL JUDGMENT IN FAVOR OF DEFENDANTS HASEKO (EWA), INC. AND CITY AND COUNTY OF HONOLULU
(APPENDIX D)

Pursuant to Rules 54 and 58 of the Hawaii Rules of Civil Procedure and the Court's Order (1) Granting in Part and Denying in Part Defendant City and County of Honolulu's Motion to Enforce Order Granting in Part and Denying in Part Defendant City and County of Honolulu's Motion to Dismiss Plaintiff Craig Smallwood's Amended Complaint Filed July 30, 2008 and/or in the Alternative, Motion for a More Definite Statement (Filed August 19, 2008), (2) Denying Without Prejudice Plaintiff Craig Smallwood's Motion for Preliminary Injunction for Suspension

(Clerk Stamp Here) PLEASE NOTE

CHANGES

and Revocation of Permits Because of the Issues of Invalid by Statutes the U.S. Army Corp of Engineers FEIS for the Marina at Ocean Pointe and Other

Non-Jury Triable Issues (Filed October 8, 2008) and (3) Granting Plaintiff Craig Smallwood's Oral Motion to Withdraw Second Amended Complaint (Made November 5, 2008), filed January 22, 2009.

JUDGMENT IS HEREBY ENTERED in favor of Defendants Haseko (Ewa) Inc. and City and County of Honolulu, and against Plaintiff Craig Smallwood on all claims for relief in Plaintiff's Amended Complaint Against Haseko (Ewa) Inc., for Illegal Building and Construction Practices, and the City and County of Honolulu, Department of Planning and Permitting, for Issuance of Permits and for Non-Enforcement of Permitted Violations, filed July 30, 2008. No trial date was set, and there are no other claims or parties remaining in this action. Any remaining parties and/or claims are dismissed. (Judge's initials)

DATED: Honolulu, Hawaii May 11, 2009.

"s/"

JUDGE OF THE
ABOVE-ENTITLED
COURT

APPROVED AS TO FORM:

CRAIG SMALLWOOD
Plaintiff Pro Se

"s/"
SANDRA L. WILHIDE
Morihara Lau & Fong, LLP
Attorneys for Defendant
HASEKO (EWA), INC.

05-04651/53668

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City and County of Honolulu
Honolulu, Hawaii 96813
Telephone: (808) 768-5116

(A-21)

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

CRAIG SMALLWOOD	) CIVIL NO. 04-2315-12 (SSM)
Plaintiff,	) ORDER (1) GRANTING IN PART AND DENYING IN PART DEFENDANT CITY COUNTY OF HONOLULU'S MOTION TO ENFORCE ORDER GRANTING IN PART AND DENYING IN
HASEKO (EWA), INC., and CITY AND COUNTY OF HONOLULU,	) DEFENDANT CITY AND COUNTY OF HONOLULU'S MOTION TO DISMISS PLAINTIFF CRAIG
Defendant.	) SMALLWOOD'S AMENDED COMPLAINT FILED JULY 30, 2008 AND/OR IN THE ALTERNATIVE (APPENDIX E)

) MOTION FOR A MORE
) DEFINITE
) STATEMENT (FILED
) AUGUST 19, 2008),
) (2)DENYING WITHOUT
) PREJUDICE
) PLAINTIFF CRAIG
) SMALLWOOD'S
) MOTION FOR
) PRELIMINARY
) INJUNCTION FOR
) SUSPENSION AND
) REVOCATION OF
) PERMITS BECAUSE
) OF THE ISSUES OF
) INVALID BY STATUTE
) THE U.S. ARMY CORP
) OF ENGINEERS FEIS
) FOR THE MARINA AT
) OCEAN POINTE AND
) OTHER NON-JURY
) TRIABLE ISSUES
) (FILED OCTOBER 8,
) 2008) AND
) (3) GRANTING
) PLAINTIFF CRAIG
) SMALLWOOD'S ORAL
) MOTION TO
) WITHDRAW SECOND
) AMENDED
) COMPLAINT (MADE
) NOVEMBER 5, 2008)
)
) HEARING:

(A-23)

) **Date:** November 5, 2008
) **Time:** 9:00 a.m.
) **Judge:** Honorable
) Sabrina S. McKenna
)

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT CITY AND COUNTY OF HONOLULU'S MOTION TO ENFORCE ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT CITY AND COUNTY OF HONOLULU'S MOTION TO DISMISS PLAINTIFF CRAIG SMALLWOOD'S AMENDED COMPLAINT FILED JULY 30, 2008 AND/OR IN THE ALTERNATIVE MOTION FOR A MORE DEFINITE STATEMENT (FILED AUGUST 19,2008), (2) DENYING WITHOUT PREJUDICE PLAINTIFF CRAIG SMALLWOOD'S MOTION FOR PRELIMINARY INJUNCTION FOR SUSPENSION AND REVOCATION OF PERMITS BECAUSE OF THE ISSUES OF INVALID BY STATUTE THE U.S. ARMY CORP OF ENGINEERS FEIS FOR THE MARINA AT OCEAN POINTE AND OTHER NON-JURY TRIABLE ISSUES (FILED OCTOBER 8 2008) AND (3) GRANTING PLAINTIFF CRAIG SMALLWOOD'S ORAL MOTION TO WITHDRAW SECOND AMENDED COMPLAINT (MADE NOVEMBER 5, 2008)

Defendant City and County of Honolulu's ("City") Motion to Enforce Order Granting in Part and Denying in Part Defendant City and County of

Honolulu's Motion to Dismiss Plaintiff Craig Smallwood's Amended Complaint filed July 30, 2008 and/or in the Alternative, Motion for a More Definite Statement filed on August 19, 2008 ("City Motion to Enforce"), and Defendant Haseko (Ewa), Inc.'s ("Haseko") Substantive Joinder in Defendant City and County of Honolulu's Motion to Enforce Order Granting in Part and Denying in Part Defendant City and County of Honolulu's Motion to Dismiss Plaintiff Craig Smallwood's Amended Complaint filed July 30, 2008 and/or in the Alternative, Motion for a More Definite Statement Filed August 19, 2008, filed on October 13, 2008 ("Haseko Substantive Joinder"), came for hearing before the Honorable Sabrina S. McKenna on November 5, 2008, with the City being represented by Don K. Kitaoka, Deputy Corporation

Counsel; Haseko by Paul H. Sato; and Plaintiff Craig Smallwood ("Smallwood") appearing pro se.

-2-

In addition, Plaintiff Smallwood's Motion for Preliminary Injunction for Suspension and Revocation of Permits Because of the Issues of Invalid by Statute the U.S. Army Corp of Engineers FEIS for the Marina at Ocean Pointe and Other Non-Jury Triable Issues filed on October 8, 2008 ("Smallwood Motion for Preliminary Injunction") came for hearing before the Honorable Sabrina S. McKenna on October 31, 2008, with further argument heard on November 5, 2008, with the City being represented by Don S. Kitaoka, Deputy Corporation Counsel; Haseko by Sandra Wilhide and Paul H. Sato; and Smallwood appearing pro se.

Finally, Plaintiff Smallwood made an oral motion to withdraw his Second Amended Complaint ("Smallwood Motion to Withdraw Complaint") at the said November 5, 2008 hearing, with the City being represented by Don S. Kitaoka, Deputy Corporation Counsel, Haseko by Paul H. Sato; and Smallwood appearing pro se.

The Court, after considering the (1) various memoranda, declarations and exhibits filed in this proceeding, (2) arguments of counsel and the parties and (3) the entire record of this proceeding, hereby enters the following order regarding (1) the City Motion to Enforce and the Haseko Substantive Joinder, (2) the Smallwood Motion for Preliminary Injunction and (3) the Smallwood Motion to Withdraw Complaint:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. City Motion to Enforce and Haseko Substantive Joinder. The City Motion to Enforce and Haseko Substantive Joinder are hereby granted to the extent that Smallwood shall identify by date each environmental impact statements, environmental assessments, findings of no significant impact, determinations that no environmental assessment was required and two specific building or grading permits challenged by Smallwood. In all other respects, the City Motion to Enforce and the Haseko Substantive Joinder are denied.

2. Smallwood Motion for Preliminary Injunction. Since the Court cannot ascertain from

the Smallwood Motion for Preliminary Injunction what environmental impact statement or other environmental disclosure finding is being challenged by Smallwood, the Smallwood Motion for Preliminary Injunction is denied without prejudice.

3. Smallwood Motion to Withdraw Complaint. Plaintiff Smallwood orally made the Smallwood Motion to Withdraw Complaint based upon Smallwood's representation that he would be filing the same claims in federal court. Upon Smallwood's acceptance of Court's allowance of a withdrawal of the Second Amended Complaint upon the condition that he not refile in any State Court, the Court, pursuant to Rule 41(a)(2), Hawai'i Rules of Civil Procedure, ORDERS, ADJUDGES AND DECREES that the Second Amended Complaint be and hereby is deemed to be withdrawn as to all defendants (the

City and Haseko) without prejudice to Smallwood refilling in federal court only. There are no remaining claims or parties in this action, and therefore this action is hereby dismissed in its entirety.

DATED: Honolulu, Hawaii JAN 21 2009

"s/"

JUDGE OF THE ABOVE-ENTITLED COURT

APPROVED AS TO FORM:

CRAIG SMALLWOOD
Plaintiff Pro Se

"s/"
SANDRA L. WILHIDE
Morihara Lau & Fong, LLP
Attorneys for Defendant
HASEKO (EWA), INC.

CIVIL NO. 04-1-2315-12 (SSM), CRAIG SMALLWOOD V. HASEKO(EWA), INC. AND CITY AND COUNTY OF HONOLULU – ORDER (1) GRANTING IN PART AND DENYING IN PART DEFENDANT CITY AND COUNTY OF HONOLULU'S MOTION TO ENFORCE ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT CITY AND COUNTY OF HONOLULU'S MOTION TO DISMISS PLAINTIFF CRAIG SMALLWOOD'S AMENDED COMPLAINT

FILED JULY 30, 2008 AND/OR IN THE ALTERNATIVE, MOTION FOR A MORE DEFINITE STATEMENT (FILED AUGUST 19, 2008), (2) DENYING WITHOUT PREJUDICE PLAINTIFF CRAIG SMALLWOOD'S MOTION FOR PRELIMINARY INJUNCTION FOR SUSPENSION AND REVOCATION OF PERMITS BECAUSE OF THE ISSUES OF INVALID BY STATUTES THE U.S. ARMY CORP OF ENGINEERS FEIS FOR THE MARINA AT OCEAN POINTE AND OTHER NON-JURY TRIABLE ISSUES (FILED OCTOBER 8, 2008) AND (3) GRANTING PLAINTIFF CRAIG SMALLWOOD'S ORAL MOTION TO WITHDRAW SECOND AMENDED COMPLAINT (MADE NOVEMBER 5, 2008)

05-04651/53660

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

CRAIG SMALLWOOD,	) Civil No. 04-1-2315 (SSM)
Plaintiff(s),	) ORDER GRANTING IN PART PLAINTIFF CRAIG SMALLWOOD'S MOTION TO AMEND NOTICE OF APPEAL AND SUPPLEMENT THE RECORD WITH THE FINAL JUDGMENT AND ORDERING THE CLERK OF COURT TO RETRANSMIT THE SUPPLEMENTED RECORD ON APPEAL APPEAL TO THE INTERMEDIATE COURT OF APPEALS; NOTICE OF ENTRY
HASEKO (EWA), INC., and CITY AND COUNTY OF HONOLULU,	)
Defendant(s).	) Non-hearing motion filed 6/5/09 Judge: Sabrina S. McKenna

(APPENDIX F)

ORDER GRANTING GRANTING IN PART PLAINTIFF CRAIG SMALLWOOD' MOTION TO AMEND NOTICE OF APPEAL AND SUPPLEMENT THE RECORD WITH THE FINAL JUDGMENT AND ORDERING THE CLERK OF COURT TO RETRANSMIT THE SUPPLEMENTED RECORD ON APPEAL TO THE INTERMEDIATE COURT OF APPEALS

On June 18, 2009, the Intermediate Court of Appeals issued an Order Dismissing Appeal For Lack Of Jurisdiction on the grounds that this court had not reduced the January 22, 2009 dismissal order to a separate judgment based on the April 21, 2009 record on appeal filed by the appellate court clerk. However, on May 12, 2009 this court had entered a Final Judgment. Plaintiff filed this motion on June 5, 2009, before the ICA's June 18, 2009 order.

Plaintiff's motion is granted to the extent the court orders, pursuant to Rule 10(e)(2)(B) of the

Hawaii Rules of Appellate Procedure, that the Record On Appeal be amended to include the May 12, 2009 Final Judgment.

THE COURT ALSO ORDERS THAT THE CLERK OF COURT RETRANSMIT THE SUPPLEMENTED RECORD ON APPEAL TO THE INTERMEDIATE COURT OF APPEALS, WHICH SHALL INCLUDE ALL DOCUMENTS INCLUDED IN THE ORIGINAL RECORD ON APPEAL AND THE FIRST SUPPLEMENTAL RECORD ON APPEAL, AS WELL AS DOCUMENTS FILED AFTER THE FIRST SUPPLEMENTAL RECORD ON APPEAL.

Dated: Honolulu, Hawaii, Jul 24 2009

SEAL STAMPED
HERE
"s/"
JUDGE OF THE ABOVE –
ENTITLED COURT